

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
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EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
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)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE SETTLEMENT
WITH IRSIK & DOLL FEED SERVICES, INC.**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the debtor, Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve the compromise and settlement of claims between the Trustee and Irsik & Doll Feed Services, Inc. d/b/a Royal Beef Feed Yard ("Irsik & Doll"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010. The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. For several years prior to the filing of the Chapter 11 Case, Debtor delivered cattle (the "Subject Cattle") to Irsik & Doll. Debtor's records indicated that the Subject Cattle were sold outright to Irsik & Doll. However, documents produced in response to a subpoena revealed that, at least in some instances, Irsik & Doll may have been financing Thomas

Scott Gibson's purported purchases of the Subject Cattle from Debtor. Other documents revealed that Irsik & Doll may have financed alleged purchases of Debtor's cattle by Ed Edens (including E4 Cattle, "Edens") and/or McGib Cattle, respectively.

4. Because Debtor was not paid in full for the Subject Cattle, the Trustee initiated Adv. Proc. No. 12-59159 (the "Adversary") by filing a complaint (the "Complaint") against Irsik & Doll, Thomas Scott Gibson ("Scott") and Lisa Gibson on December 27, 2012. The Complaint asserts alternative theories of recovery against Irsik & Doll and Scott relating to the delivery of the Subject Cattle. The Trustee had already filed an adversary proceeding against Edens.

5. The Trustee served discovery on Irsik & Doll after the filing of the Complaint in order to better understand the party responsible for remaining payments owed on the Subject Cattle. Irsik & Doll produced documents in response to the Trustee's discovery requests accounting for the proceeds of all Subject Cattle. Irsik & Doll's document production demonstrates that certain of the Subject Cattle were sold outright to Irsik & Doll (for itself or as part of a joint venture in which Irsik & Doll participated) while certain of the Subject Cattle were purportedly purchased by Scott, Edens or McGib Cattle with financing provided by Irsik & Doll. For the Subject Cattle that were sold outright to Irsik & Doll, Irsik & Doll produced documentation to evidence that Irsik & Doll paid for the Subject Cattle in full at the time of delivery. For the Subject Cattle that were purportedly sold to Scott, Edens or McGib Cattle, Irsik & Doll produced documentation to evidence the financing provided by Irsik & Doll, the costs of caring for the Subject Cattle while they were located with Irsik & Doll, the sale price of the Subject Cattle and the "equity" checks that were delivered to Scott, Edens or McGib Cattle upon the re-sale of the Subject Cattle.

6. Irsik and Doll retains possession of \$141,254.64 of the proceeds of the Subject Cattle (the "Outstanding Proceeds"). Edens asserts rights to a portion of the Outstanding Proceeds in the aggregate sum of \$63,695.56, which the Trustee disputes (the "Purported Edens Proceeds"). The Trustee claims that the entirety of the Outstanding Proceeds are owed to Debtor's estate.

7. Irsik & Doll also filed two proofs of claim (the "POCs") in the Chapter 11 Case. The POCs are designated on the official claims register maintained by The BMC Group, Inc. as claim nos. 312 and 366 and assert unsecured claims totaling \$514,889.40. The Trustee filed an objection (the "Objection") to the POCs.

8. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012 [Dock. No. 1490] (as it may be subsequently amended or modified, the "Plan"). The Court entered an Order on December 17, 2012 [Dock. No. 1644] (the "Confirmation Order") confirming the Plan. Pursuant to the Plan and the Confirmation Order, general unsecured creditors of Debtor's estate may choose to "opt in" and receive a distribution from the "Fifth Third Claim Settlement Fund" (as that term is defined in the Plan). Choosing to "opt-in" affects such creditor's rights to and amount of distributions under the Plan, waives certain of the creditor's claims against non-Debtor entities and has other and further effects that are more particularly described in the Plan and the Confirmation Order. Irsik & Doll submitted an "opt-in" agreement.

The Settlement

9. The Trustee has negotiated a settlement of all disputes with Irsik & Doll on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as

Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, Irsik & Doll agrees to deliver the Outstanding Proceeds to the Trustee. The Trustee shall hold the Purported Edens Proceeds in escrow until the earlier of the Court's determination of relative rights in and to the Purported Edens Proceeds and agreement between the Trustee and Edens as to the respective rights of the Debtor's estate and Edens in and to the Purported Edens Proceeds. The Trustee shall also indemnify Irsik & Doll against claims in and to the Outstanding Proceeds up to the amount of the Outstanding Proceeds actually delivered to the Trustee.

10. Irsik & Doll shall waive and shall not assert any rights in and to the Outstanding Proceeds, and the Trustee agrees to allow the POCs as a single unsecured, "opt-in" claim in the total amount of \$265,000.

Basis for Relief

11. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

12. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

13. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. Irsik & Doll has properly accounted for the proceeds of the Subject Cattle and has agreed to turn over all Outstanding Proceeds. The Trustee has researched and negotiated the Allowed Claim in his

business interests and believes the Allowed Claim represents a fair reduction from Irsik & Doll's claimed amount of \$514,889.40. The alternative to the settlement is litigation of the claim amount which would result in expenses and delay and create the possibility of an outcome that would result in a larger allowed claim and delay in receiving the Outstanding Proceeds.

14. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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